IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2258 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHAILESH NARSINHBHAI JASANI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2258 of 2005

MR BM MANGUKIYA for Petitioner No. 1

MR IM PANDYA, AGP for Respondents

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 06/04/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the petitioner challenging his detention in pursuance of the order passed against him by Police Commissioner, Surat City, on 30th November, 2004, in exercise of powers

conferred upon him under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The petitioner is under detention as dangerous person from 1st January, 2005 in pursuance of the above order.

2. The grounds of detention as placed on record reveal that the detaining authority took into consideration two types of materials in arriving at subjective satisfaction. Firstly, the detaining authority took into consideration two crimes registered against the petitioner for the offences punishable under Sections 394, 397, 120-B and 342 of the Indian Penal Code and under Section 25(1)A of the Arms Act, 1959, both before Varachha Police Station, Surat on 10th June, 2004 and 2nd July, 2004. In the first case, it was alleged that the petitioner along with the other co-accused was involved in robbery of raw diamonds and Maruti Zen Car. In the second case, it was alleged that along with the other co-accused, the petitioner was involved in robbery of hero-honda and robbed diamonds worth Rs.30,000-00. The detaining authority took into consideration thoroughly and exhaustively investigation papers in both the cases and came to the conclusion that the petitioner was a habitual offender.

3. Secondly, the detaining authority relied upon two incamera statements as recorded by the sponsoring authority on 30th October, 2004 and 31st October, 2004 as verified by the detaining authority on 26th November, 2004. The identity of the witnesses is not disclosed by the detaining authority, claiming privilege under Section 9(2) of the PASA Act. The first witness referred to an incident occurred on 21st August, 2004, while the witness was passing through Varachha Police Station area, the petitioner and his accomplices accosted him and demanded whatever was with the witness. The witness stated that he had nothing with him. The witness was beaten by the petitioner and his accomplices, though the crowd was gathered, but the same was dispersed on account of fear and terror of the petitioner, the public order was disturbed and ultimately, the petitioner snatched cash of Rs.2,000-00 and diamonds worth Rs.5,000-00 from the witness. The second incident referred by the witness occurred on 5th September, 2004. While the witness was passing through Varachha Police Station area, at about 10.00 hours, he was rounded by the petitioner and his accomplices. The witness was threatened and to produce whatever was with in his possession and to hand over the same to the petitioner. The petitioner attempted to snatch wallet from the pocket of the witness and on refusal, the witness was beaten. The shouts for help

raised by the witness, attracted the crowd, but none dared to rescue the witness. The crowd was dispersed on account of fear and terror of the petitioner and public order was disturbed. Ultimately the petitioner snatched Rs.4,000-00 in cash from the witness and one gold ring from the witness.

4. From the above material, the detaining authority came to the conclusion that the petitioner was indulged in illegal activities of committing robbery and extorting money from the innocent citizens. The detaining authority concluded that the petitioner was a dangerous person within the meaning of PASA Act. The detaining authority came to the conclusion that the petitioner was ferocious and of violent temperament and was beating and harassing innocent citizens for executing his illegal activities. On account of terror and fear of the petitioner, nobody dared to file any complaint against him. The detaining authority concluded that the activities of the petitioner were prejudicial to the maintenance of public order and were required to be prevented forthwith. After considering other alternative remedies available against the petitioner under the general law, the detaining authority came to the conclusion that there was no other alternative, except to detain the petitioner under the PASA Act as dangerous person to prevent his illegal activities forthwith. The detaining authority, therefore, passed an order of detention of the petitioner as aforesaid which is under challenge in this petition.

5. Learned advocate Mr.B.M.Mangukia for the petitioner and learned AGP Mr.I.M.Pandya for the respondents were heard at length. The affidavit-in-reply as filed by the detaining authority and placed on record by the learned AGP, is taken into consideration.

6. Out of various grounds urged on behalf of the petitioner to challenge the order of detention as opposed and controverted by the learned AGP, it appears that this petition can be examined and disposed of on the sole issue that whether the right of the petitioner to make effective representation as guaranteed under Article 22(5) of the Constitution of India is breached.

7. Admittedly, the detaining authority placed reliance upon the investigation papers of the two crimes registered against the petitioner. On going through the papers as served upon the petitioner at the time of execution of the order upon the petitioner, it is found that there are certain important panchnamas drawn by the

investigating agency and very vital documents for incriminating the petitioner and to link his activities with the public order. The copies of the panchnamas placed on record indicates that the said copies do not reflect correct position in respect of the signatures of the panchas as well as investigating officer. The original panchnamas, undoubtedly, must be bearing the signatures or thumb marks as the case may be of the persons who were panchas on the said panchnamas and the signatures of the investigating officer, this exact position is not reflected in the copies of the panchnamas served upon the petitioner, because they are simply typed copies. These panchnamas are the grounds upon which the detaining authority has placed reliance. Meaning thereby that serving copies of the panchnamas without indicating exactness of signatures of panchas affects the right of the detenu to make effective representation. It is settled law that in the cases of preventive detention when liberty of citizens and security of society is to be weighed, utmost care is required to safeguard the liberty of citizens. The whole preventive action becomes invalid on account of simple nonobservance of the said safeguard. Exactly this has happened in this case, and, therefore, the right of the petitioner to make effective representation is adversely affected. Further, the detention of the petitioner becomes bad in law on the sole issue. The order challenged in this petition is required to be quashed and set aside on this ground alone.

8. In the result, the petition is allowed. The order passed by Police Commissioner, Surat City on 30th November, 2004, against the petitioner in exercise of powers under Section 3(1) of the PASA Act is hereby quashed and set aside. The detenu - Shailesh Narsinbhai Jasani, is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule is made absolute. Direct service is permitted.

[J. R. VORA,J.]

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